IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1708 OF 2004

Mrs.Pramila Navin Shaha,)
aged 42 years, residing at 153,)
Neelkamal, Plot No.6, Shivaji Park,)
Dadar (W), Mumbai.).. Petitioner

Vs.

1. The State of Maharashtra,)

2. Shri Bapusaheb Yadav,)
Special Executive Magistrate,)
Dadar Division, Mumbai.)

3. Senior Inspector of Police,)
Shivaji Park Police Thane,)
Mumbai.).. Respondents

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CRIMINAL WRIT PETITION NO.1709 OF 2004

Mr.Navin Shaha,)
aged 42 years, residing at 153,)
Neelkamal, Plot No.6, Shivaji Park,)
Dadar (W), Mumbai.).. Petitioner

Vs.

1. The State of Maharashtra,)

2. Shri Bapusaheb Yadav,)
Special Executive Magistrate,)
Dadar Division, Mumbai.)

3. Senior Inspector of Police,)
Shivaji Park Police Thane,)
Mumbai.).. Respondents

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Shri M.K.Kocharekar for the Petitioners.

Ms P.H.Kantharia, APP for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATED : 19th JANUARY, 2005.

Oral Judgment: (Per Khandeparkar, J)

1. Since common questions of law and facts arise in both these petitions, they were heard together and are being disposed of by this common order.

2. Heard. Rule. By consent, the rule is made returnable forthwith.

3. The petitioners challenge the impugned order passed by the authorities below in the proceedings under Section 111 of the Code of Criminal Procedure, 1973 for execution of the interim bonds and further for quashing of such bonds obtained upon passing of such orders. The reliance is placed in that regard in the decision of the learned Single Judge of this Court in **The State of Maharashtra & Anr. v. Mangali Dewaiyya Pupalla,** reported in 1993(1) Bom.C.R.115 as also the decision of the Apex Court in the matter of **Madhu Limaye & Anr. v. Sub Divisional Magistrate, Monghyr & Ors.,** reported in 1971 Cri.L.J. 1720.

4. It is not in dispute that pursuant to the issuance of and service of the show cause notices dated 16th August, 2004 under Section 107 of the Code of Criminal Procedure, 1973, the respondents insisted for execution of the interim bonds and obtained the same on the very day i.e. on 16th August, 2004 itself allegedly for the purpose of maintaining peace in the locality under Section 116(3) of the Code of Criminal Procedure, during the pendency of the proceedings.

5. The provisions of law comprised under Section 116(3) of the Code of Criminal Procedure clearly read thus:

> "116(3) After the commencement, and before the completion of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary of the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has ben made to execute a

bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

PROVIDED that -

(a) no person against whom proceedings are not being taken under section 108, section 109 or section 110 shall be directed to execute a bond for maintaining good behaviour;

(b) the condition of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.

6. Apparently, the proviso (a) to Sub-section (3) of Section 116 of the Code of Criminal Procedure

clearly provides that the interim bond cannot be insisted upon in the proceedings other than those under Sections 108, 109 and 110. Admittedly, in the matter in hand, the proceedings were initiated consequent to the allegations against the Petitioners of likelihood of breach of peace and the act on the part of the petitioners. Obviously, therefore, those proceedings are in terms of Section 107 of the Code of Criminal Procedure. Being so, considering the provisions of law comprised under the proviso (a) to sub-section (3) of Section 116 of the Code of Criminal Procedure, the respondents could not have insisted for execution of the interim bonds by the petitioners in the proceedings initiated against them. On that count itself, the orders directing the petitioners to execute interim bonds and further the interim bonds obtained consequently from the petitioners are liable to be quashed.

7. The learned Single Judge of this Court while dealing with the similar issue had held that "the correct interpretation of Clause (a) of the proviso to sub-section (3) of Section 116 of the Code is that the power of the Magistrate to direct a person to execute a Bond for keeping the peace or maintaining of good behaviour until the conclusion of the inquiry is

restricted only to cases arising under sections 108, 109 or 110 of the Code." We are in respectful agreement with the said ruling of the learned Single Judge in the matter of **Mangali Dewaiyya Pupalla's case (supra)**. Being so, the impugned orders directing the petitioners to execute interim bonds are liable to be set aside and the interim bonds obtained from the petitioners are liable to be quashed.

8. As regards the grievance of the petitioners for quashing and setting aside the impugned notices under Section 107 of the Code of Criminal Procedure, the learned Advocate for the petitioners fairly submitted that if the Petitioners are given sufficient time to file necessary reply to the said notices, the petitioners would file the same before the authorities below, while reserving the petitioners' right to approach this Court in case any final order to be passed happens to be contrary to the interest of the petitioners.

9. In the result, therefore, the petitions succeed. The impugned orders dated 16th August, 2004 directing the petitioners to execute interim bonds and further the interim bonds obtained from the petitioners are hereby quashed and set aside. The

petitioners to file reply to the said impugned notices dated 16th August, 2004 within a period of two weeks from today to the concerned authorities and the concerned authorities, after hearing the petitioners, to pass an appropriate order in accordance with the provisions of law. The rule is made absolute accordingly with no order as to costs. It is made clear that this Court has not expressed any opinion on the merits of the case.

(R.M.S.Khandeparkar, J)

(P.V.Kakade, J)